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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following report of the Select Committee on the Bill further to amend the Benares Hindu University Act, 1915, was presented to Parliament on the 7th September, 1951:—

WE, the undersigned, members of the Select Committee to which the Bill to amend the Banaras Hindu University Act, 1915, was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Upon the changes proposed by us which are not formal or consequential, we note below.—

Clause 1.—We have re-drafted sub-clause (2) of clause 1 because it is necessary that clauses 15 and 16 should come into force at once. It may also be necessary to bring the remaining provisions of the Act into force on different dates.

Clause 3.—In the proposed section 4, we have omitted the words “subject to the Ordinances” and the words “where such test is specially prescribed by the Statutes” in order to prevent the provisions of the section from being whittled down by any Ordinances or Statutes made on the subject.

In the proposed section 4A, we have empowered the University to make special arrangements in respect of the residence, discipline and teaching of women students and to confer degrees and academic distinctions on women who have pursued a course of private study and have passed the necessary examinations of the University. Although the provisions inserted by us are enabling provisions, we recommend that the University should give effect to them by making the necessary provisions in the Statutes or the Ordinances.

We have also expressly empowered the University to create any administrative, ministerial and other posts for which no specific provision is made in the Act.

In the proposed section 5, we have added a new sub-section (7) which enables the Visitor to annul any proceeding of the University which is not in conformity with the Act, Statutes or the Ordinances. We have

also introduced a new section 5A which provides for a quinquennial review of the work and progress of the University by a committee appointed in this behalf by the Visitor.

Clause 4.—We have re-drafted the proposed section 7 so as to specify separately the authorities and officers of the University. In our opinion, the Syndicate of the University which has been performing useful functions should be continued, but we think it would be more appropriate to call it the Standing Committee of the Academic Council.

Clause 5.—We have empowered the court to review the acts not only of the Executive Council but also of the Academic Council and the Standing Committee of the Academic Council.

Clause 6.—In the proposed sub-section (1) of section 10, we have omitted the provision "prescribing the maximum number of members of the court" because provisions relating to the Constitution of the court are to be made in the Statutes.

Clause 7.—In the proposed sub-section (1) of section 11, we have omitted the word "entire" because the Executive Council will also have certain powers in respect of Academic matters.

Clause 8.—The re-draft of the proposed section 12 is consequent upon the decision to have a Standing Committee of the Academic Council.

Clause 11.—We have prescribed the limits of the University with reference to the main temple of the University.

Clause 13.—We have added a provision that a member of the court may propose the draft of a Statute.

Clause 14.—We have added a new section 19A on the lines existing in other similar University Acts providing that every salaried officer and teacher of the University shall be appointed under a written contract and that any dispute arising out of such contract shall be referred to a Tribunal of Arbitration. Such a provision exists in other Acts.

Clause 16.—We have added a new clause so as to facilitate the transition from the provisions of the existing Act to the provisions of the Act as amended by this Bill.

2. The Bill was published in the Gazette of India, Part II—Section 2, dated the 5th May, 1951.

3. We consider that the Bill has not been so circulated as to ensure circulation under rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament and we recommend that it be passed as now amended.

M. ANANTHASAYANAM AYYANGAR

A. K. AZAD

B. R. AMBEDKAR

M. HIFZUR RAHMAN

*R. K. SIDHVA

*M. A. KAZMI

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*ZAKIR HUSAIN

*K. T. SHAH
*GOVIND MALAVIYA
J. D'SOUZA S. J.
*GOVIND DAS
DESHBANDHU GUPTA
SYED NAUSHERALI
JAIPAL SINGH
G. DURGABAI
*TEK CHAND
P. S. DESHMUKH
*H. N. KUNZRU
MONO MOHON DAS
*SYAMA PRASAD MOOKERJEE

NEW DELHI;

The 7th September, 1951.

MINUTE OF DISSENT

I

Although no formal decision was taken, the majority view was that the words "Hindu" and "Muslim" from the main heading of both the bills be deleted. I hold the majority view.

Regarding religious instruction I think it should be definitely laid down that the religious instruction, debates or talks shall be in spiritual, moral and musical subjects only. If it is not made clear then there is likelihood of clash and differences in various sectors and believers of religions in both viz. Hindu and Muslim communities. Shias and Sunnis and Baha'is will demand their own way of religious instructions, so will Sanatanis, Arya Samajists, and Murti Pujaks. Under these circumstances I think the suggestion made by me if accepted will avoid such a clash.

R. K. SIDHVA

NEW DELHI;

The 7th September, 1951.

II

There are two matters on which I don't see eye to eye with the members of the Select Committee.

2. The first relates to the appointment of a Pro-Vice-Chancellor as provided in clause 7. I would like the words "if any" to be inserted after the word "Pro-Vice-Chancellor" in clause 7 of the Banaras Hindu University Amendment Bill, as are sought to be added after that word by clause 16 of the Aligarh Muslim University Amendment Bill in the case of the Aligarh University. The Court of the Banaras Hindu

University, which is the supreme governing body of that University, has passed a resolution to the effect that the office of Pro-Vice-Chancellor is unnecessary. I dare say the fact of a resolution of the supreme governing body of the University advocating the abolition of the office of Pro-Vice-Chancellor would at least show that the question needs examination. What, however, the amending Bill seeks to do is to provide for that office as if there were a clear case for it. This is certainly not so.

3. The provision for the office of a Pro-Vice-Chancellor was originally made for the Banaras Hindu University because it was believed that an eminent public man, who would not be able to give his whole time to the University, would hold the office of Vice-Chancellor. It was therefore deemed desirable to have a man on the spot in the person of the Pro-Vice-Chancellor. Statute 11 of the First Statutes of the University, which defined his duties, ran as follows:

“The Pro-Vice-Chancellor shall be ex-officio Secretary of the Court and the Council. He shall be the executive assistant to the Vice-Chancellor in all matters administrative and academic including the discipline of the graduates and undergraduates.”

The nature of the duties of the Pro-Vice-Chancellor as disclosed by this Statute was consistent with what he was originally intended to do and mostly men retired from Government service were recruited to discharge them. With the exception of one eminent Vice-Chancellor of the Banaras Hindu University appointed in special circumstances, all other Vice-Chancellors have been men who have not devoted their whole time to the work. If the Vice-Chancellorship is to continue to be a part time office, there is certainly need of a Pro-Vice-Chancellor. If, however, the Vice-Chancellorship is going to be a whole-time office as recommended by the University Education Commission, the question as to whether there should be a Pro-Vice-Chancellor certainly needs to be examined. The terms and conditions of the office of Vice-Chancellor are going to be determined by Statutes to be framed by the Central Government and until that has been done, a verdict on the need or otherwise for the office of Pro-Vice-Chancellor is not possible. I am aware that the Banaras Hindu University is a big institution but Universities with almost as big a budget are running efficiently without a Pro-Vice-Chancellor. It has also to be remembered that the Banaras Hindu University is divided into Colleges and there is a Principal appointed for each College. A large part of the academic and administrative business of the Colleges is attended to by the Principals of Colleges themselves.

4. On financial considerations too, the proposal to have a Pro-Vice-Chancellor would seem to be extremely inappropriate and unsound when we have a rather expensive establishment of the Vice-Chancellor.

Although in the absence of relevant data it is somewhat difficult to say what it exactly costs the University to keep a Pro-Vice-Chancellor, I have no doubt that it is a substantial sum of money which it can ill afford in these difficult days. In this connection I would invite a reference to Table No. 2 on page 21 of the Budget statement of the Banaras Hindu University for the year 1951-52, in which the Vice-Chancellor's office is shown to have cost the University a sum of Rs. 55,801 during the last

year. An analysis of this expenditure as disclosed by the Budget Statement for 1951-52 is given below—the figures for "telephone charges" and "motor expenses" particularly are interesting.

Expenditure	Actuals of the year 1948-49	Actuals of 1949-50	Actuals * 1950-51 (Prelim.)	Budget Revised 1950-51	Budget
1. Establishment . . .	34,361	17,901	34,105	41,763	42,342
2. B. H. U. Contribution to Provident Fund . . .				538	495
3. Stationery & Printing . .	272	535	589	700	600
4. Postage and Telegrams . .	318	654	835	1,000	1,000
5. Telephone charges . . .	792	1,131	2,415	2,459	1,000
6 Travelling Expenses . . .	3,032	9,140	2,169	4,677	5,500
7. Motor Expenses . . .	1,235	2,444	4,346	4,164	3,500
8. Miscellaneous . . .	153	518	338	500	500
9. Servants' Uniform . . .	..	..	..	..	..
10. Repairs to furniture . .	..	..	..	..	..
	41,168	32,373	44,797	55,801	54,937

The actual cost, however, is more. Assuming that the Vice-Chancellor uses only one car the annual depreciation on this car (presumably purchased during 1948-49, *vide* item No. VII(1) on page 17 of the Budget Statement for 1951-52 against which an entry of Rs. 45,293 has been made) cannot be less than Rs. 4,000 per annum. To this also must be added another Rs. 5,000 at least on account of the rent of his free furnished residence and its maintenance. So the total expenditure on the Vice-Chancellor's office comes to about Rs. 65,000 per annum. The figures regarding the office of Pro-Vice-Chancellor are not with me, but assuming that the Pro-Vice-Chancellor, on account of his salary, free car, free furnished residence and maintenance of lawns and grounds appurtenant thereto, etc. costs about half as much as the Vice-Chancellor, the expenditure on his office can be assessed at about Rs. 30,000 per annum. This is hardly justifiable. No University can and should spend nearly Rs. 1 lakh per annum on the Vice-Chancellor and Pro-Vice-Chancellors' offices alone.

5. In view of the above considerations, we are driven to the irresistible conclusion that we need have no Pro-Vice-Chancellor for the Banaras Hindu University. This office would hardly appear to be necessary, but I am prepared to accept a permissive provision on the lines of that made in the Aligarh Muslim University Bill.

6. The second point on which I differ from my colleagues arises out of the provision in clause 4A(vii) which empowers the University "to institute professorships, readerships, lecturerships and any other teaching posts required by the University and to appoint persons to such professorships, readerships, lecturerships and other posts." This classification does not

correspond with the existing classification of teachers in the Banaras Hindu University where the main categories of teacherships are University Professorships, Professorships and Assistant Professorships. I am personally opposed to the existence of a hierarchy in the teaching staff of Universities and there is a growing body of opinion in the teaching profession strongly opposed to such hierarchy. Even Governments in certain States like Uttar Pradesh and Bihar have not accepted a three-layered classification in the superior teaching services. Such classification operates as a handicap against the legitimate promotion of even qualified and experienced lecturers to posts of Readers as the bottleneck for promotion to higher posts is too narrow. In actual practice all the teachers are engaged in both undergraduate and postgraduate work and an appreciable number of lecturers possess research qualifications and experience but they have no chance of any legitimate promotion and retire on the modest emoluments in the scale in which they began their career. On account of more numerous avenues open elsewhere there is a real danger of Universities not attracting the best talents. By making the crossing of efficiency bar depend upon research work, defects inherent in the scheme can be avoided.

7. When more important matters like the appointment and conditions of service of Vice-Chancellor and the constitution and powers of authorities like the Court, the Executive Council and the Academic Council are being left by the Bill to be regulated by Statutes to be framed later, it is only proper that a less important matter like classification of teachers is so left and is not regulated by the Bill itself. This would not debar the classification of teachers into professors, readers and lecturers by Statute or Ordinance and would at the same time make it possible to provide for such classification as the University may deem proper with the approval of the Government. I see distinct advantage in the Banaras Hindu University Amending Act not containing any provision about the actual classification of teachers and leaving the matter to be regulated by Statutes or Ordinances which would admit of change much more easily as compared with an Act of Parliament. In my view clause 4A(vii) should be substituted by more general words, namely, "to institute teaching posts required by the University and to appoint persons to such posts".

R. U. SINGH

NEW DELHI.

The 7th September, 1951.

III

We are definitely and strongly of the opinion that the proposed new section 5A should be deleted from the Bill to amend the Banaras University Act.

ZAKIR HUSAIN

H. N. KUNZRU

NEW DELHI:

The 7th September, 1951.

IV

I have signed this Report subject to the following minute of dissent.

2. I do not think the purpose of making religious instruction not compulsory, in conformity with the ideal of a secular State, will be served by

the clause as it stands and the proviso to it. By permitting such instruction to be given to those who ask for it, without at the same time placing an obligation upon the University concerned to provide such instruction in any religion in which students ask for, if the students asking for it are adequate in number, and if the University has sufficient means and facilities for the purpose. The result of the present wording would be that only Hindu students will ask for and get such religious instruction in Banaras, and only Muslim students do so in Aligarh. The two Universities would thus continue to remain exclusively Hindu or Muslim institutions, so far as providing religious instruction is concerned. I think, therefore, that a further proviso is necessary to add to the existing one, requiring the Universities to provide instruction in any religion for which there is sufficient demand; and in regard to which the University concerned has sufficient financial and other facilities. This would, also, help to keep such instruction on a higher plane of religious philosophy, rather than dogma or ritual, which tend to narrow the mind and create rigid moulds of thought.

3. I also, consider it necessary that the University should itself have power and authority to make arrangements for an impartial hearing and disposal of any complaint that the teachers, or any of them, or the students, may have against any University authority or officer. Accordingly, in the clause dealing with the "Powers of the University", I would like to amend so as to authorise the University to set up, whenever the occasion demands, its own Tribunal of arbitration in regard to any complaint that any students, teachers, or officers of the University may have to make in regard to their treatment, or in regard to the terms and conditions of their service. This will enable the University to avoid any needless washing of its dirty linen, or exhibiting in the public any unsavoury skeleton; and minimise the occasions for the use of the emergency powers vested in the Visitor to the disadvantage of the University.

4. The provision for Quinquennial Inspection, inserted by the Select Committee, would be shorn of its hardship, in regard to occasions for complaints or dissatisfaction, contemplated in the preceding paragraph, if the Arbitration or Judicial Tribunal, suggested therein, can be set up at any time, and off its own bat, by the University, without waiting for 5 years to elapse, and an outside authority carry out an inspection, make its report, and thereupon require the University to take the action indicated.

5. The Quinquennial Inspection would gain very considerably in utility, if an obligation is placed on the Government to meet the legitimate needs and requirements of the University, as revealed by such inspection. A corresponding obligation would, of course, have to be, as it is, placed on the University authorities to carry out any instructions given as the result of such Inspection, if it reveals any deficiencies or shortcomings of the University.

6. On principle I am against the institution of a Visitor, and more specifically if the Visitor is to be the Head of the Union. I consider it would tend to bring the President of the Union needlessly into Party politics. His decisions can only be those of his Ministers, and those Ministers would, *as hypothesis*, be Party leaders. The autonomy of a University is, in my eyes, too sacred a principle to be thus made the plaything of Party politics. If a Visitor is, nevertheless, thought to be indispensable, I would

rather have the Chancellor of the University vested with this authority, than the President of the Union

K. T. SHAH

New Delhi;

The 7th September, 1951.

V

1. The Benares Hindu University is a running institution. Its present Constitution has two sets of bodies to deal with the academic and the administrative matters. The Supreme body of the University, namely, the Court, deals with administrative affairs, with the Executive Council as its executive body. It carries on the day to day administration of the University. The Senate is the Supreme body on the academic side with the Syndicate as its executive. This bifurcation of the academic and the administrative control has worked during these thirty years with marked success and smoothness. What is more, it has tended to keep the academic side of the University pure and clean, the bane of party politics, if at all, being confined to the administrative sections.

The Select Committee has agreed that this healthy bifurcation should remain and the bodies which are at present called the Senate and the Syndicate should continue, but it has recommended by a small majority that the names of the Senate and the Syndicate should now be changed into "The Academic Council" and "The Standing Committee of the Academic Council".

We are of the opinion that the old names, Senate and Syndicate, should be allowed to remain. The Indian Universities' Commission have themselves said that it is not their intention "to see exact uniformity of constitution even among Universities to the same general type". Besides, all the printed records of the University of the past decades, all resolutions and correspondence, have been in the name of the Senate and Syndicate. Since these two bodies are going to be retained, we are strongly of the opinion that there is no need to disturb the present names. We suggest that they should be allowed to remain.

The only argument advanced for the change was that in some Universities the Senate is the Supreme body and that by calling it 'the Academic Council', uniformity would prevail in the three Central Universities. We are unable to see the weight of this argument. But whatever there be in it, the advantage of retaining a name which has come down, when such retention makes no difference whatsoever in the substance, is obvious and we feel that it should be done.

"II. We should like to draw attention to the supreme importance of the complete autonomy of Universities. It is a principle not only recognised but assiduously followed and maintained all over the world. When our Universities were started in this country, the Government of the day was a foreign Government which distrusted the people in all matters, and therefore, put down clauses in the various Universities' Acts giving powers of interference to the Government in their affairs. We regret we have not been able to get from the Parliamentary Library or from the Ministry of Education Library the Acts and Calendars of most of the foreign Universities. But, to the extent that we could, such powers of interference did

not exist in the Acts constituting the Universities of free countries. We would, therefore, feel happy if Clause 5, sub-clause (2), (3), (4), (5) and (6) are dropped.

In the Select Committee it was mentioned that the above powers of the Visitor would be exercised only "in any grave emergency". No opposition was expressed to this and we assumed that this had been agreed to. If these sub-clauses have to remain, we suggest that at the beginning of clause 5, sub-clause (2), the words "In any grave emergency" should be added.

III. With regard to clause 5A:

We suggest the addition of the words "and requirements" after the word "needs" in this Clause to clarify the meaning and the purpose of this clause more fully. It was argued in the Select Committee that the word "needs" includes 'requirements'. There should, therefore, be no objection to its inclusion.

We should also like to add at the end of this clause: "It will be the duty of the Central Government to fulfil the needs of the University to the best extent possible."

IV Last but not the least our objection is to the terms of Clause 15 of the Bill. We are glad that the Honourable Minister for Education has agreed, and will announce in the Parliament, that he will appoint a Committee of 5 or 7 members of Parliament to whom the draft adaptations and modifications in the present Statutes of the University shall be referred and that the decisions of the Committee will be accepted and given effect to by the Government. This is satisfactory so far as it goes and is a distinct improvement upon the clause as provided in the Bill.

We are of the opinion that the adaptations and amendments of the Statutes, when provisionally finalised, should be sent to the Universities concerned for their opinions thereon and that they should be finalised only after taking such opinions into consideration and being laid before Parliament.

The three suggestions which we wish to make now regarding clause 15 of the Bill are as follows —

(1) That this Committee should be appointed by the Parliament on a motion by the Honourable the Education Minister. This will be a more correct procedure and in keeping with the position and powers of the Parliament. It will make no difference in actual fact and we can see no possible objection to this course being adopted.

(2) That the decisions of this Committee should be placed on the table of the House for the information of the members of the Parliament.

(3) That the procedure agreed to by the Hon'ble the Education Minister, and the modifications proposed by us therein, if accepted, should be substituted in the Act in place of the proposed first para. of clause 15 of the Bill, which, as at present, reduces the Parliament to a nullity.

As we have said, our proposal will make little difference in actual effect. But our suggestion is motivated by a desire to maintain the sovereignty and powers of Parliament intact. In the history of the British Parliament, the tendency for Government to take over in its own hands more and more

powers had been on the increase at one stage until in 1929 a Committee was appointed by Lord Sankey as Lord Chancellor, called "The Ministers' Power Committee" which laid down that Parliamentary control over delegated legislation was necessary. Provision was then made for it by Statute.

We must safeguard against this danger overtaking us also. Our proposal will make little difference in substance but will result in the observance of the correct and healthy procedure. We cannot be without hope that on further thought, the Government will find no objection to our suggestion. The Parliament, we trust, will agree with us.

We reserve to ourselves the right of moving amendments to the Bill as amended by the Select Committee.

All our remarks except those relating to the Senate and the Syndicate at the Benares Hindu University, apply to the Bill relating to the Aligarh Muslim University also, *mutatis mutandis*.

GOVIND MALAVIYA

SYAMA PRASAD MOOKERJEE

GOVIND DAS

M. A. KAZMI

NEW DELHI:

The 7th September, 1951.

VI

Clause 15.—I am not in favour of clause 15 of the Bill, in so far as it gives to the Central Government the final power to make adaptations and modifications in the Statutes now in force. When the Benares Hindu University Act was passed in 1915, the first Statutes were incorporated in a Schedule which was an integral part of the Act and was passed by both Houses of the Legislature. The same procedure was followed when the Aligarh University Act and the Delhi University Act were passed. As the present Bill materially enlarges the scope of the Statutes, which now deal with such important matters as the establishment and abolition of Faculties, Departments, Halls, Colleges and Institutions, it is very necessary that the first Statutes should have been incorporated in a Schedule attached to the Bill and passed by Parliament.

The only reason given for not following this procedure is that the Schedule would swell the size of the Bill and it would take a great deal of time which may not be available in the present Sessions of Parliament. With respect, I consider this a very feeble argument, indeed. It seems to me that this is an instance of the recent tendency to delegate to the executive power to legislate on important matters without any reference to, or control by, Parliament. This is a dangerous tendency and I cannot too strongly deprecate it.

In England, during the World War I and the succeeding years, numerous instances of such unrestricted delegation of legislative power to Ministers or Heads of Departments occurred. This gave rise to bitter criticism in and outside the two Houses of the British Parliament and in 1929 Lord Chancellor Sankey appointed a Committee called the "Ministers' Power Committee" to examine the question and make suggestions. After an

elaborate enquiry the Committee submitted its report in 1932. Its conclusions were that while delegated legislation is inevitable in the existing circumstances, it is necessary to retain some kind of Parliamentary control over it. This is now secured by making clear provision in the Statute (whereby such powers are delegated to Ministers or other authorities that the Rules and Regulations framed by them shall be laid before Parliament and will be dealt with in one of the following ways

- (a) The Rules or Regulations made by delegated authority shall be laid before Parliament as soon as may be; or
- (b) after being so laid, they shall not come into effect until the expiration of a specified period, which usually is forty days; or
- (c) they shall be before Parliament for a specified period, during which any member may move a resolution annulling or modifying them, and they shall be annulled or modified accordingly, or
- (d) the Rules or Regulations shall lapse after a specified period, unless Parliament has expressly approved them

In addition, there is a Standing Committee of Parliament to which all Rules and Regulations framed by delegated authority and all Orders-in-Council are submitted for scrutiny. In this way, effective Parliamentary control is ensured. In our Parliament no such Standing Committee has yet been constituted

In an important matter like the first Statutes of Benaras' and Aligarh Universities I am not in favour of giving the Central Government unrestricted and uncontrolled power to frame the first Statutes which will, *inter alia*, deal with the Constitution, Powers and Duties of various University Bodies and under which Faculties, Departments, Colleges and Institutions may be established or abolished. The least that should be done is to follow one of the four modes in which British Parliament secures control over delegated legislation.

I would therefore, strongly urge that clause 15 be amended so as to provide that the adaptations and additions to the statutes in force at the commencement of the Amending Act, made by the Central Government, be laid before Parliament and shall come into force after one month from the date on which they are so laid.

Clause 5.—I suggest that in sub-clause (2) of clause 5 the words "in cases of emergency" be added in the beginning. As clause 5A has made provision for quinquennial review of the University by Inspection Committee appointed by the Visitor, it seems necessary to add these words. It was stated that inspection contemplated in clause 5(2) to 5(6) will be done in cases of emergency only, and this should be stated expressly in the Act.

TEJ CHAND

NEW DELHI;

The 7th September, 1951.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words underlined indicate the amendments suggested by the Committee; asterisks indicate omissions)

BILL No. 43 OF 1951

A bill further to amend the Benares Hindu University Act, 1915.

Enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Benares Hindu University (Amendment) Act, 1951.

(2) Sections 15 and 16 shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions.

2. Substitution of certain expressions for certain other expressions in Act XVI of 1915.—In the Benares Hindu University Act, 1915 (hereinafter referred to as the principal Act), whenever an expression mentioned in column 1 of the Table hereunder occurs then, unless otherwise expressly provided in this Act, there shall be substituted therefor the expression set opposite to it in column 2 of the said Table

TABLE

1	2
Benares Council Regulations Senate	Benares Executive Council Ordinances Academic Council

3. Substitution of new sections for sections 4, 5 and 6 in Act XVI of 1915.—For sections 4, 5 and 6 of the principal Act, the following sections shall be substituted, namely:—

“4. University open to all classes, castes and creeds.—The University shall * * * * be open to persons of either sex and of whatever race, creed, caste or class, and it shall not be lawful for the University to adopt or impose on any person any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction;

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it.

4A. Powers of the University—The University shall have the following powers, namely:—

(1) to provide for instruction in such branches of learning as the University may think fit, and to make provision for research and for the advancement and dissemination of knowledge;

(2) to promote Oriental studies, and in particular Vedio, Hindu, Buddhist and Jain studies, and to give instruction in Hindu religion and to impart moral and physical training;

(3) to hold examinations and to grant and confer degrees and other academic distinctions to and on persons who—

(a) shall have pursued a course of study in the University or in an institution maintained under sub-section (1) of section 15 or admitted to the privileges of the University under sub-section (2) of that section, or

(b) are teachers in educational institutions, under conditions laid down in the Statutes and the Ordinances, and shall have passed the examinations of the University under like conditions, or

(c) being women, shall have pursued a course of private study and shall have passed the examinations of the University under conditions laid down in the Ordinances;

(4) to confer honorary degrees or other distinctions ***** in the manner laid down in the Statutes;

(5) to grant such diplomas to, and to provide such lectures and instruction for, persons not being members of the University, as the University may determine;

(6) to co-operate with other Universities and authorities in such manner and for such purposes as the University may determine;

(7) to institute professorships, readerships, lecturerships and *other teaching posts required by the University and to appoint persons to such professorships, readerships, lecturerships and other posts,

(8) to institute and award fellowships (including travelling fellowships), scholarships, studentships, exhibitions and prizes in accordance with the Statutes and the Ordinances.

(9) to institute and maintain Halls and hostels and to recognise places of residence for students of the University;

(10) to demand and receive such fees and other charges as may be prescribed by the Ordinances;

(11) to supervise and control the residence and to regulate the discipline of students of the University, and to make arrangements for promoting their health;*

(12) to make special arrangements in respect of the residence, discipline, and teaching of women students;

(13) to create administrative, ministerial and other necessary posts and to make appointments thereto; and

(14) to do all such other acts and things, whether incidental to the powers aforesaid or not, as may be requisite in order to further the objects of the University.*****

5. *Visitor*.—(1) The President of India shall be the Visitor of the University.

(2) The Visitor shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories and equipment and of any institution maintained by the University, and also of the examinations, teaching and other work conducted or done by the University and to cause an inquiry to be made in like manner in respect of any matter connected with the University.

(3) The Visitor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry.

(4) The Visitor may address the Vice-Chancellor with reference to the result of such inspection and inquiry, and the Vice-Chancellor shall communicate to the Executive Council the views of the Visitor with such advice as the Visitor may offer upon the action to be taken thereon.

(5) The Executive Council shall communicate through the Vice-Chancellor to the Visitor such action, if any, as it is proposed to take or has been taken upon the result of such inspection or inquiry.

(6) Where the Executive Council does not, within a reasonable time, take action to the satisfaction of the Visitor, the Visitor may, after considering any explanation furnished or representation made by the Executive Council, issue such directions as he may think fit and the Executive Council shall be bound to comply with such directions.

(7) Without prejudice to the foregoing provisions of this section the Visitor may, by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances:

Provided that before making any such order the Visitor shall call upon the University to show cause why such order should not be made and if any cause is shown within a reasonable time, shall consider the same.

5A. *Quinquennial review*.—(1) There shall be a review of the working and progress of the University and of its needs, once during every period of five years commencing on the 1st day of the coming into force of the Benares Hindu University (Amendment) Act, 1951, by a committee appointed for the purpose by the Visitor and consisting of such number of persons as the Visitor may think fit.

(2) The Committee appointed under sub-section (1) shall inspect the University and shall make a report to the Visitor.

(3) The report of the committee appointed under sub-section (1) shall be communicated to the University for such action as the University may think fit.

6. *Chief Rector and Rectors*—(1) The Governor of the State of Uttar Pradesh shall be the Chief Rector of the University

(2) Such persons ***** as may be appointed in this behalf in accordance with the Statutes, shall be the Rectors of the University."

4. **Substitution of section 7 in Act XIV of 1915.**—For section 7 of the principal Act, the following section shall be substituted, namely—

"7. *Officers and authorities of the University.*—The following shall be the officers and authorities of the University—

OFFICERS OF THE UNIVERSITY

(i) The Chancellor,

(ii) The Pro-Chancellor:

Provided that until one of the two Pro-Chancellors holding office at the commencement of the Benares Hindu University (Amendment) Act, 1951, ceases to hold office, there shall be two Pro-Chancellors.

(iii) The Vice-Chancellor,

(iv) The Pro-Vice-Chancellor,

(v) The Treasurer,

(vi) The Registrar,

(vii) The Deans of the Faculties, and

(viii) Such other persons in the service of the University as may be declared by the Statutes to be the officers of the University.

AUTHORITIES OF THE UNIVERSITY

(i) The Court,

(ii) The Executive Council,

(iii) The Academic Council,

(iv) The Standing Committee of the Academic Council,

(v) The Finance Committee,

(vi) The Faculties, and

(vii) Such other authorities as may be declared by the Statutes to be authorities of the University.

5. **Amendment of section 9, Act XVI of 1915.**—In section 9 of the principal Act,—

(a) in sub section (1).—

(i) the words "in administrative matters," shall be omitted;

(ii) for the words and brackets "the Senate (save when the Senate has acted in accordance with powers conferred on it under this Act, the Statutes or the Regulations)" the words and brackets "the Executive Council, the Academic Council and the Standing

Committee of the Academic Council (save when these authorities have acted in accordance with powers conferred on them under this Act, the Statutes or the Ordinances)" shall be substituted.

(b) sub-section (2) shall be omitted

6. Amendment of section 10, Act XVI of 1915.—For sub-section (1) of section 10 of the principal Act, the following sub-section shall be substituted, namely:—

"(1) The Executive Council shall be the executive body of the University".

7. Amendment of section 11, Act XVI of 1915.—In section 11 of the principal Act—

(a) in sub-section (1) the word "entire" shall be omitted.

(b) sub-section (2) shall be omitted.

8. Amendment of section 12, Act XVI of 1915.—For section 12 of the principal Act, the following section shall be substituted, namely:—

"12. The Standing Committee of the Academic Council.—There shall be a Standing Committee of the Academic Council which shall exercise such powers and perform such duties as may be vested in it by the Statutes."

9. Amendment of section 13, Act XVI of 1915.—For sub-section (1) of section 13 of the principal Act, the following sub-section shall be substituted, namely:—

"(1) The accounts of the University shall, once at least in every year and at intervals of not more than fifteen months, be audited by the Comptroller and Auditor-General of India."

10. Amendment of section 14, Act XVI of 1915.—In section 14 of the principal Act, for the words "the States" the word "India" shall be substituted.

11. Amendment of section 15, Act XVI of 1915.—In section 15 of the principal Act,—

(a) in sub-section (1), for the words "institutions in Benares" the words "institutions including High Schools, within a radius of fifteen miles from the main temple of the University" shall be substituted;

(b) in sub-section (2), for the words "institutions in Benares" the words "institutions including High Schools, within the aforementioned limits" shall be substituted.

12. Amendment of section 16A, Act XVI of 1915.—In section 16A of the principal Act, after the word "fund" the words "or provide such insurance scheme" shall be inserted.

13. Amendment of section 17, Act XVI of 1915.—In section 17 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted namely:—

“(1) Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

(a) the constitution, powers and duties of the Court, the Executive Council, the Academic Council, the Standing Committee of the Academic Council, the Finance Committee and such other bodies, as *may be deemed necessary to constitute from time to time;

(b) the election and continuance in office of the members of the said bodies, including the continuance in office of the first members, and the filling of vacancies of members, and all other matters relative to those bodies for which it may be necessary or desirable to provide;

(c) the appointment, powers and duties of * the officers of the University;

(d) the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University;

(e) the conferment of honorary degrees;

(f) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(g) the establishment and abolition of Faculties ** Departments, Halls, Colleges and institutions;

(h) the conditions under which colleges and other institutions may be admitted to the privileges of the University and the withdrawal of such privileges;

(i) the institution of fellowships, scholarships, student-ships, exhibitions, medals and prizes; and

(j) all other matters which by this Act are to be or may be provided by the Statutes.”;

(ii) for sub-sections (3), (4) and (5), the following sub-sections shall be substituted, namely:—

“(3) The Court may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereinafter in this section provided.

(4) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court, and such draft shall be considered by the Court at its next meeting.

(5) The Court may approve any such draft as is referred to in sub-section (4) and pass the Statute or reject it or * return it to the Executive Council for reconsideration, either in

whole or in part, together with any amendments which the Court may suggest:

Provided that the Executive Council shall not propose the draft of any Statute or of any amendment of a Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal, and any opinion so expressed shall be in writing and shall be considered by the Court.

(6) Any member of the Court may propose to the Court the draft of any Statute and the Court may either reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of a draft proposed to the Court by the Executive Council.

(7) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow or remit it for further consideration”.

14. Substitution of new sections for sections 18 and 19 in Act XVI of 1915.—For sections 18 and 19 of the principal Act, the following sections shall be substituted, namely:—

“18. *Ordinances.*—(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(c) the degrees, diplomas, certificates and other academic distinctions to be awarded by the University, the qualifications for the same, and the means to be taken relating to the granting and obtaining the same;

(d) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;

(e) the conditions of the award of fellowships, scholarships, studentships, exhibitions, medals and prizes;

(f) the conduct of examinations including the terms of office and manner of appointment and the duties of examining bodies; examiners and moderators;

(g) the maintenance of discipline among the students of the University;

(h) the conditions of residence of students at the University;

(i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students, and the prescribing for them of special courses of study;

(j) the giving of religious instruction;

(k) the emoluments and the terms and conditions of service of teachers of the University;

(l) the management of Colleges and other institutions founded or maintained under sub-section (1) of section 15;

(m) the supervision and inspection of Colleges and other institutions admitted to privileges of the University under sub-section (2) of section 15; and

(n) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

(2) The Regulations of the University as in force immediately before the commencement of the Benares Hindu University (Amendment) Act, 1951, shall be deemed to be the first Ordinances made under this section.

(3) The said Ordinances may be amended, repealed or added to at any time by the Executive Council:

Provided that—

(i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council;

(ii) no Ordinance shall be made—

(a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations, or

(b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study,

unless a draft of such Ordinance has been proposed by the Academic Council.

(4) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of sub-section (3) but may reject the proposal or return the draft to the Academic Council for reconsideration; either in whole or in part, together with any amendments which the Executive Council may suggest.

(5) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Central Government and the Central Government may, by order, direct that the proposed Ordinance shall be laid before the next meeting of the Court for its approval and that pending such approval it shall have effect from such date as may be specified in the order:

Provided that if the Ordinance is not approved by the Court at such meeting, it shall cease to have effect.

(6) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Visitor and the Court, and shall be considered by the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two-thirds of the member voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall from the date of such resolution cease to have effect.

(7) The Visitor may, by order, direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance, and any order of suspension under this sub-section shall cease to have effect on the expiration of one month from the date of such order or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(8) The Visitor may, at any time after an Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall cease to have effect.

19. *Power to make Regulations.*—(1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances—

(a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by Regulations; and

(c) providing for all matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes or the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any such Regulation:

Provided that any authority of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.

19A. *Conditions of service of officers and teachers.*—(1) Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

(2) Any dispute arising out of a contract between the University and any of its officers or teachers shall, at the request of the officer or teacher concerned or at the instance of the University, be referred to a

Tribunal of Arbitration consisting of one member appointed by the Executive Council, one member nominated by the officer or teacher concerned and an umpire appointed by the Visitor, and the decision of the Tribunal shall be final."

15. Temporary provision for amendment of Statutes.—The Central Government may, by notification in the Official Gazette, make such adaptations and modifications in the Statutes in force immediately before the commencement of this Act as in its opinion may be necessary or expedient to bring the provisions of the Statutes into accord with the provisions of the principal Act as amended by this Act.

Provided that nothing in this section shall be deemed to empower the Central Government to make any adaptation or modification of any such Statutes after the expiration of three months from the commencement of this Act.

16. Transitional provisions.—Any officer or authority of the University exercising any functions under the principal Act, immediately before the commencement of this Act, shall continue to exercise such functions until the corresponding new officer or authority is appointed, elected or constituted in accordance with the provisions of the principal Act as amended by this Act or the Statutes as adapted or modified under this Act.

The following report of the Select Committee on the Bill further to amend the Aligarh Muslim University Act, 1920, was presented to Parliament on the 7th September, 1951:—

REPORT OF THE SELECT COMMITTEE.

WE, the undersigned, members of the Select Committee to which the Bill further to amend the Aligarh Muslim University Act, 1920, was referred, have considered the Bill and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

We have generally brought the Bill in line with the Benares Hindu University Bill, 1951 and we have proposed the same amendments which we have proposed in that Bill. There remains only one point which is peculiar to this Bill and to which we need refer.

We have altogether omitted section 32 of the Act which was merely amended by the original Bill. Section 32 relates to the admission of students to the University and the holding of examinations. These matters are to be regulated by Ordinances and the section, therefore, does not serve any useful purpose. We may add that no such corresponding section exists in the Benares Hindu University Act, 1915.

2. The Bill was published in the Gazette of India, Part II—Section 2, dated the 9th June, 1951.

3. We consider that the Bill has not been so altered as to require circulation under rule 77(4) of the Rules of Procedure and the Conduct

of Business in Parliament and we recommend that it be passed as now amended

M ANANIHASAYANAM AYYANGAR
A K AZAD
B R AMBEDKAR
*M A KAZMI
*R K SIDHVA
*K T SHAH
M HIFZUR RAHMAN
*GOVIND MALAVIYA
*R U SINGH
*ZAKIR HUSAIN
D SOUZA S J
*GOVIND DAS
S D DEO
DESHBANDHU GUPTA
SYED NAUSHI RAI
JAIPAL SINGH
G DURGABAI
*TEK CHAND
P S DESHMUKH
*H N KUNZRU
DR MONO MOHON DAS
*SYAMA PRASAD MOOKERJEE

NEW DELHI

The 7th September, 1951

MINUTES OF DISSENT

I

Although no formal decision was taken the majority view was that the words 'Hindu' and 'Muslim' from the main heading of both the bills be deleted. I hold the majority view.

2 Regarding religious instruction I think it should be definitely laid down that the religious instruction debates or talks shall be in spiritual moral and musical subjects only. If it is not made clear then there is likelihood of clash and differences in various sectors and beliefs of religions in both the Hindu and Muslim communities. Shris and Sunis and Bahais will demand their own way of religious instructions, so will Sanatanis, Arya Samajis, and Murti Pujaks. Under these circumstances I think the suggestion made by me if accepted will avoid such a clash.

R K SIDHVA

NEW DELHI,

The 7th September, 1951

*Subject to a Minute of Dissent

II

I have signed this Report subject to the following minute of dissent.

2 I do not think the purpose of making religious instruction not compulsory, in conformity with the ideal of a secular State, will be served by the clause as it stands and the proviso to it. By permitting such instruction to be given to those who ask for it, without at the same time placing an obligation upon the University concerned to provide such instruction in any religion in which students ask for, if the students asking for it are adequate in number, and if the University has sufficient means and facilities for the purpose. The result of the present wording would be that only Hindu students will ask for and get such religious instruction in Benares, and only Muslim students do so in Aligarh. The two Universities would thus continue to remain exclusively Hindu or Muslim institutions, so far as providing religious instruction is concerned. I think, therefore, that a further proviso is necessary to add to the existing one, requiring the Universities to provide instruction in any religion for which there is sufficient demand, and in regard to which the University concerned has sufficient financial and other facilities. This would, also, help to keep such instruction on a higher plane of religious philosophy, rather than dogma or ritual which tend to narrow the mind and create rigid moulds of thought.

3. I, also, consider it necessary that the University should itself have power and authority to make arrangements for an impartial hearing and disposal of any complaint that the teachers, or any of them, or the students, may have against any University authority or officer. Accordingly, in the clauses dealing with the "Powers of the University", I would like to amend so as to authorise the University to set up, whenever the occasion demands, its own Tribunal of arbitration in regard to any complaint that any students, teachers, or officers of the University may have to make in regard to their treatment, or in regard to the terms and conditions of their service. This will enable the University to avoid any needless washing of its dirty linen, or exhibiting in the public any unsavoury skeleton; and minimise the occasions for the use of the emergency powers vested in the Visitor to the disadvantage of the University.

4. The provision for Quinquennial Inspection, inserted by the Select Committee, would be shorn of its hardship, in regard to occasions for complaints or dissatisfaction, contemplated in the preceding paragraph, if the Arbitration or Judicial Tribunal, suggested therein, can be set up at any time, and off its own bat, by the University, without waiting for 5 years to elapse, and an outside authority carry out an inspection, make its report, and thereupon require the University to take the action indicated.

5. The Quinquennial Inspection would gain very considerably in utility, if an obligation is placed on the Government to meet the legitimate needs and requirements of the University, as revealed by such inspection. A corresponding obligation would, of course, have to be, as it is, placed on the University authorities to carry out any instructions given as the result of such Inspection, if it reveals any deficiencies or shortcomings of the University.

6 On principle I am against the institution of a Visitor, and more specifically if the Visitor is to be the Head of the Union. I consider it would tend to bring the President of the Union needlessly into Party politics. His decisions can only be those of his Ministers, and those Ministers would, *ex*

hypothesi, be Party leaders. The autonomy of a University is, in my eyes, too sacred a principle to be thus made the plaything of Party politics. If a Visitor is, nevertheless, thought to be indispensable, I would rather have the Chancellor of the University vested with this authority, than the President of the Union.

K. T. SHAH.

NEW DELHI;

The 7th September, 1951.

III

I. The Benares Hindu University is a running institution. Its present Constitution has two sets of bodies to deal with the academic and the administrative matters. The Supreme body of the University, namely, the Court, deals with administrative affairs, with the Executive Council as its executive body. It carries on the day to day administration of the University. The Senate is the Supreme body on the academic side with the Syndicate as its executive. This bifurcation of the academic and the administrative control has worked during these thirty years with marked success and smoothness. What is more, it has tended to keep the academic side of the University pure and clean, the bane of party politics, if at all, being confined to the administrative sections.

The Select Committee has agreed that this healthy bifurcation should remain and the bodies which are at present called the Senate and the Syndicate should continue, but it has recommended by a small majority that the names of the Senate and the Syndicate should now be changed into "The Academic Council" and "The Standing Committee of the Academic Council".

We are of the opinion that the old names, Senate and Syndicate, should be allowed to remain. The Indian Universities' Commission have themselves said that it is not their intention "to see exact uniformity of constitution even among Universities of the same general type". Besides, all the printed records of the University of the past decades, all resolutions and correspondence, have been in the name of the Senate and Syndicate. Since these two bodies are going to be retained, we are strongly of the opinion that there is no need to disturb the present names. We suggest that they should be allowed to remain.

The only argument advanced for the change was that in some Universities the Senate is the Supreme body and that by calling it 'the Academic Council', uniformity would prevail in the three Central Universities. We are unable to see the weight of this argument. But whatever there be in it, the advantage of retaining a name which has come down, when such retention makes no difference whatsoever in the substance, is obvious and we feel that it should be done.

II. We should like to draw attention to the supreme importance of the complete autonomy of Universities. It is a principle not only recognised but assiduously followed and maintained all over the world. When our Universities were started in this country, the Government of the day was a foreign Government which distrusted the people in all matters, and therefore, put down clauses in the various Universities' Acts giving powers of interference to the Government in their affairs. We regret we have not been able to get from the Parliamentary Library or from the Ministry of Education Library

the Acts and Calendars of most of the foreign Universities. But, to the extent that we could, such powers of interference did not exist in the Acts constituting the Universities of free countries. We would, therefore, feel happy if clause 5, sub-clauses (2), (3), (4), (5) and (6) are dropped.

In the Select Committee it was mentioned that the above powers of the Visitor would be exercised only "in any grave emergency". No opposition was expressed to this and we assumed that this had been agreed to. If these sub-clauses have to remain, we suggest that at the beginning of clause 5, sub-clause (2), the words "In any grave emergency" should be added.

III. With regard to clause 5A:

We suggest the addition of the words "and requirements" after the word "needs" in this clause to clarify the meaning and the purpose of this clause more fully. It was argued in the Select Committee that the word "needs" includes 'requirements'. There should, therefore, be no objection to its inclusion.

We should also like to add at the end of this clause: "It will be the duty of the Central Government to fulfil the needs of the University to the best extent possible."

IV. Last but not the least our objection is to the terms of clause 15 of the Bill. We are glad that the Honourable Minister for Education has agreed, and will announce in the Parliament, that he will appoint a Committee of 5 or 7 members of Parliament to whom the draft adaptations and modifications in the present Statutes of the University shall be referred and that the decisions of the Committee will be accepted and given effect to by the Government. This is satisfactory so far as it goes and is a distinct improvement upon the clause as provided in the Bill.

We are of the opinion that the adaptations and amendments of the Statutes, when provisionally finalised, should be sent to the Universities concerned for their opinions thereon and that they should be finalised only after taking such opinions into consideration and being laid before Parliament.

The three suggestions which we wish to make now regarding clause 15 of the Bill are as follows:—

(1) That this Committee should be appointed by the Parliament on a motion by the Honourable the Education Minister. This will be a more correct procedure and in keeping with the position and powers of the Parliament. It will make no difference in actual fact and we can see no possible objection to this course being adopted.

(2) That the decisions of this Committee should be placed on the table of the House for the information of the members of the Parliament.

(3) That the procedure agreed to by the Hon'ble the Education Minister, and the modifications proposed by us therein, if accepted, should be substituted in the Act in place of the proposed first para of clause 15 of the Bill, which, as at present, reduces the Parliament to a nullity.

As we have said, our proposal will make little difference in actual effect. But our suggestion is motivated by a desire to maintain the sovereignty and powers of Parliament intact. In the history of the British Parliament, the tendency for Government to take over in its own hands more and more

powers had been on the increase at one stage until in 1929 a Committee was appointed by Lord Sankey as Lord Chancellor, called "The Ministers' Power Committee" which laid down that Parliamentary control over delegated legislation was necessary. Provision was then made for it by Statute.

We must safeguard against this danger overtaking us also. Our proposal will make little difference in substance but will result in the observance of the correct and healthy procedure. We cannot be without hope that on further thought, the Government will find no objection to our suggestion. The Parliament, we trust, will agree with us.

We reserve to ourselves the right of moving amendments to the Bill as amended by the Select Committee.

All our remarks except those relating to the Senate and the Syndicate at the Benares Hindu University, apply to the Bill relating to the Aligarh Muslim University also, *mutatis mutandis*.

GOVIND MALAVIYA.

SYAMA PRASAD MOOKERJEE.

GOVIND DAS.

M. A. KAZMI.

NEW DELHI;

The 7th September, 1951.

IV

I feel that in view of the new clause 28 recommended for insertion by the Select Committee containing "Transitional Provisions", clause 14 should run as follows:

"Sub-section 1 of Section 19 of the Principal Act shall be omitted."

The amendment to sub-section 1 of Section 19 as contained in clause 14 has become unnecessary and is likely to create difficulties.

R. U. SINGH.

NEW DELHI;

The 7th September, 1951.

V

We are definitely and strongly of the opinion that clause 10A should be deleted from the Bill to amend the Aligarh Muslim University Act.

NEW DELHI;

The 7th September, 1951.

ZAKIR HUSAIN

H. N. KUNZRU.

VI

Clause 15.—I am not in favour of clause 15 of the Bill, in so far as it gives to the Central Government the final power to make adaptations and modifications in the Statutes now in force. When the Benares Hindu University Act was passed in 1915, the first Statutes were incorporated in a Schedule which was an integral part of the Act and was passed by both Houses of the Legislature. The same procedure was followed when the Aligarh University Act and the Delhi University Act were passed. As the present Bill materially enlarges the scope of the Statutes, which now deal with such important matters as the establishment and abolition of Faculties, Departments, Halls, Colleges and Institutions, it is very necessary that the first Statutes should have been incorporated in a Schedule attached to the Bill and passed by Parliament.

The only reason given for not following this procedure is that the Schedule would swell the size of the Bill and it would take a great deal of time which may not be available in the present Session of Parliament. With respect, I consider this a very feeble argument, indeed. It seems to me that this is an instance of the recent tendency to delegate to the executive power to legislate on important matters without any reference to, or control by, Parliament. This is a dangerous tendency and I cannot too strongly deprecate it.

In England, during the World War I and the succeeding years, numerous instances of such unrestricted delegation of legislative power to Ministers or Heads of Departments occurred. This gave rise to bitter criticism in and outside the two Houses of the British Parliament and in 1929 Lord Chancellor Sankey appointed a Committee called the "Ministers' Power Committee" to examine the question and make suggestions. After an elaborate enquiry the Committee submitted its report in 1932. Its conclusions were that while delegated legislation is inevitable in the existing circumstances, it is necessary to retain some kind of Parliamentary control over it. This is now secured by making clear provision in the Statute (whereby such powers are delegated to Ministers or other authorities) that the Rules and Regulations framed by them shall be laid before Parliament and will be dealt with in one of the following ways:—

- (a) The Rules or Regulations made by delegated authority shall be laid before Parliament as soon as may be; or
- (b) after being so laid, they shall not come into effect until the expiration of a specified period, which usually is forty days; or
- (c) they shall lie before Parliament for a specified period, during which any member may move a resolution annulling or modifying them, and they shall be annulled or modified accordingly; or
- (d) the Rules or Regulations shall lapse after a specified period, unless Parliament has expressly approved them.

In addition, there is a Standing Committee of Parliament to which all Rules and Regulations framed by delegated authority and all Orders-in-Council are submitted for scrutiny. In this way, effective Parliamentary control is ensured. In our Parliament no such Standing Committee has yet been constituted.

In an important matter like the first Statutes of Benares and Aligarh Universities I am not in favour of giving the Central Government unrestricted and uncontrolled power to frame the first Statutes which will, *inter alia*, deal with the Constitution, Powers and Duties of various University Bodies and under which Faculties, Departments, Colleges and Institutions may be established or abolished. The least that should be done is to follow one of the four modes in which British Parliament secures control over delegated legislation.

I would, therefore, strongly urge that clause 15 be amended so as to provide that the adaptations and additions to the Statutes in force at the commencement of the Amending Act, made by the Central Government, be laid before Parliament and shall come into force after one month from the date on which they are so laid.

Clause 5.—I suggest that in sub-clause (2) of clause 5 the words “in cases of emergency” be added in the beginning. As clause 5A has made provision for quinquennial review of the University by Inspection Committee appointed by the Visitor, it seems necessary to add these words. It was stated that inspection contemplated in clause 5(2) to 5(6) will be done in cases of emergency only, and this should be stated expressly in the Act.

TEK CHAND.

NEW DELHI;

The 7th September, 1951.

N.B.—The above applies, *mutatis mutandis*, to the Aligarh University (Amendment) Bill.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words *side-lined* or *underlined* indicate the amendments suggested by the Committee; *asterisks* indicate omissions.)

BILL No. 53 OF 1951

A Bill further to amend the Aligarh Muslim University Act, 1920

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Aligarh Muslim University (Amendment) Act, 1951.

(2) Sections 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions.

2. Amendment of section 2, Act XL of 1920.—In section 2 of the Aligarh Muslim University Act, 1920 (hereinafter referred to as the principal Act),—

(a) in clause (d), for the words “or maintained” the words “maintained or recognised” shall be substituted;

(b) clause (e) shall be omitted.

3. Amendment of section 5, Act XL of 1920.—In section 5 of the principal Act,—

(i) in clause 3, in sub-clause (b) after the word “institutions,” the word “or” shall be inserted and after the said sub-clause (b) as so amended the following sub-clause shall be inserted, namely:—

“(c) being women, shall have pursued a course of private study,”;

(ii) in sub-clause (4) the words “on approved persons” shall be omitted;

(iii) in sub-clause (5) after the word “diplomas” the words “and certificates” shall be inserted;

(iv) in sub-clause (7)—

(a) the word “any” shall be omitted;

(b) for the words "and posts" the words "and other posts" shall be substituted;

(v) in sub-clause (8), after the word "scholarships" the word "studentships" shall be inserted;

(vi) in sub-clause (9) for the words "for the residence of" the words "and Hostels and to recognise places of residence for the" shall be substituted;

(vii) in sub-clause (11) after the words "residence and" the words "to regulate the" shall be inserted and the word "and" at the end of the sub-clause shall be omitted;

(viii) after sub-clause (11) the following sub-clauses shall be inserted, namely:—

"(11A) to make special arrangements in respect of the residence, discipline and teaching of women students;

(11B) to create administrative, ministerial and other necessary posts and to make appointments thereto; and";

(ix) in sub-clause (12) all words after the words "the University" shall be omitted.

4. Amendment of section 7, Act XL of 1920.—In section 7 of the principal Act, for the words and letters "Part A States and Part C States" the word "India" shall be substituted.

5. Substitution of new section for section 8 in Act XL of 1920.—For section 8 of the principal Act, the following section shall be substituted, namely:—

"8. University open to all classes, castes and creeds.—The University shall be open to persons of either sex and of whatever race, creed, caste, or class, and it shall not be lawful for the University to adopt or impose on any person, any test whatsoever of religious belief or profession in order to entitle him to be admitted therein, as a teacher or student, or to hold any office therein, or to graduate thereat, or to enjoy or exercise any privilege thereof, except *in respect of any particular benefaction accepted by the University, where such test is made a condition thereof by any testamentary or other instrument creating such benefaction:

Provided that nothing in this section shall be deemed to prevent religious instruction being given in the manner prescribed by the Ordinances to those who have consented to receive it."

6. Omission of section 9 in Act XL of 1920.—Section 9 of the principal Act shall be omitted.

7. Substitution of new section for section 11 in Act XL of 1920.—For section 11 of the principal Act, the following section shall be substituted, namely:—

"11. Teaching in the University.—All recognised teaching for the purpose of University degrees, diplomas and certificates shall be conducted in the name of the University and in accordance with the

Ordinances and shall include lectures, seminars, tutorial instruction and practical work in the laboratory or in the field.

8. Substitution of new section for section 12 in Act XL of 1920.—For section 12 of the principal Act, the following section shall be substituted, namely —

“12 *Power to establish and maintain High School and other institutions* — (1) The University shall, subject to the Statutes, have power to establish and maintain High Schools within a radius of fifteen miles from the University Mosque

(2) The University may also with the sanction of the Visitor and subject to the Statutes and the Ordinances establish and maintain within the aforementioned limits any other institution whose objects fall within the powers of the University as described in section 5

9. Substitution of new section for section 12A in Act XL of 1920.—For section 12A of the principal Act the following section shall be substituted namely —

‘12A *Power to recognise Colleges and Institutions* — With the approval of the Academic Council and the sanction of the Visitor, and subject to the Statutes and the Ordinances, the University may admit Colleges and institutions within fifteen miles of the University Mosque to such privileges of the University as it thinks fit

10. Amendment of section 13 Act XL of 1920.—In section 13 of the principal Act —

(i) for the words ‘oid Rector’, wherever they occur the word ‘Visitor’ shall be substituted,

(b) for the word ‘Court’ wherever it occurs the words ‘Executive Council’ shall be substituted,

(c) in sub section (2) all the words after the words ‘with the University’ shall be omitted and after the sub section as so amended the following sub section shall be inserted namely —

“(2A) The Visitor shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to appoint a representative who shall have the right to be present and be heard at such inspection or inquiry”, and

(d) after sub section (5) the following sub section shall be inserted, namely —

‘(6) Without prejudice to the foregoing provisions of this section, the Visitor may by order in writing, annul any proceeding of the University which is not in conformity with this Act, the Statutes or the Ordinances

Provided that before making any such order he shall call upon the University to show cause why such an order should not be made, and if any cause is shown within a reasonable time, shall consider the same.

10A. Insertion of new section in Act XL of 1920.—After section 13 of the principal Act, the following section shall be inserted, namely:—

“13A. Quinquennial review.—(1) There shall be a review of the working and progress of the University and of its needs, once during every period of five years commencing from the date of the coming into force of the Aligarh Muslim University (Amendment) Act, 1951, by a Committee appointed for the purpose by the Visitor and consisting of such number of persons as the Visitor may think fit.

(2) The Committee appointed under sub-section (1) shall inspect the University and shall make a report to the Visitor.

(3) The report of the Committee appointed under sub-section (1) shall be communicated to the University for such action as the University may think fit.”

11. Omission of section 14 in Act XL of 1920.—Section 14 of the principal Act shall be omitted.

12. Substitution of new section for section 15 in Act XL of 1920.—For section 15 of the principal Act, the following section shall be substituted, namely:—

“15. Chief Rector and Rectors.—(1) The Governor of the State of Uttar Pradesh shall be the Chief Rector of the University.

*(2) Such persons ** as may be appointed in this behalf in accordance with the Statutes shall be the Rectors of the University.”*

13. Amendment of section 16, Act XL of 1920.—In section 16 of the principal Act, the word “and” at the end of item (3) shall be omitted, and after the said item (3) the following shall be inserted, namely:—

“(3A) The Pro-Vice-Chancellor, if any;

(3B) The Treasurer;

(3C) The Registrar;

(3D) The Deans of the Faculties; and”

14. Amendment of section 19, Act XL of 1920.—For sub-section (1) of section 19 of the principal Act, the following sub-section shall be substituted, namely:—

“(1) The successors to the Vice-Chancellor holding office at the commencement of the Aligarh Muslim University (Amendment) Act, 1951, shall be appointed in the manner provided in the Statutes.”

15. Amendment of section 21, Act XL of 1920.—In section 21 of the principal Act,—

(a) for the words “the Pro-Chancellor and the Vice-Chancellor” the words “and the Pro-Chancellor” shall be substituted;

(b) the words “and the Ordinances” shall be omitted.

15A. Amendment of section 22, Act XL of 1920.—In section 22 of the principal Act, the word “and” at the end of item (3) shall be omitted and after the said item (3) the following shall be inserted, namely:—

(3A) The Finance Committee;

(3B) The Faculties; and”

16. Amendment of section 23, Act XL of 1920.—In section 23 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “and the Vice-Chancellor” the words and brackets “the Vice-Chancellor and the Pro-Vice-Chancellor (if any)” shall be substituted;

(ii) the proviso shall be omitted;

(b) in sub-section (2) ** the words “and direct that necessary action be taken by the Executive or Academic Council, as the case may be, on any recommendations of the Lord Rector” shall be omitted.

17. Substitution of new section for section 27 in Act XL of 1920.—For section 27 of the principal Act, the following section shall be substituted, namely:—

“27. *Power to make Statutes.*—Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

(a) the constitution, powers and duties of the authorities of the University;

(b) the election and continuance in office of the members of the said authorities, including the continuance in office of the first members, and the filling of vacancies of members, and all other matters relative to those authorities for which it may be necessary or desirable to provide;

* * * * *

(c) the appointment, powers and duties of the officers of the University;

* * * * *

(d) the constitution of a pension or provident fund and the establishment of an insurance scheme for the benefit of the officers, teachers and other employees of the University;

(e) the conferment of honorary degrees;

(f) the institution of fellowships, scholarships, studentships, exhibitions, medals and prizes;

(g) the withdrawal of degrees, diplomas, certificates and other academic distinctions;

(h) the establishment and abolition of Faculties, Departments, Halls, Colleges and other institutions;

(i) the conditions under which Colleges and institutions may be admitted to privileges of the University and for the withdrawal of such privileges;

(j) the establishment of High Schools and other institutions in accordance with the provisions of section 12; and

(k) all other matters which by this Act are to be or may be provided by the Statutes."

18. Amendment of section 28, Act XL of 1920.—For sub-section (2) of section 28 of the principal Act, the following sub-sections shall be substituted, namely:—

"(2) The Court may, from time to time, make new or additional Statutes or may amend or repeal the Statutes in the manner hereinafter in this section provided.

(3) The Executive Council may propose to the Court the draft of any Statute to be passed by the Court, and such draft shall be considered by the Court at its next meeting.

(4) The Court may approve any such draft as is referred to in sub-section (3) and pass the Statute or reject it or return it to the Executive Council for reconsideration, either in whole or in part, together with any amendments which the Court may suggest:

Provided that the Executive Council shall not propose the draft of any Statute or of any amendment of a Statute affecting the status, powers or constitution of any existing authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal, and any opinion so expressed shall be in writing and shall be considered by the Court.

(5) Any member of the Court may propose to the Court the draft of any Statute and the Court may reject the proposal or refer such draft for consideration to the Executive Council, which may either reject the proposal or submit the draft to the Court in such form as the Executive Council may approve, and the provisions of this section shall apply in the case of any draft so submitted as they apply in the case of a draft proposed to the Court by the Executive Council.

(6) Every new Statute or addition to the Statutes or any amendment or repeal of a Statute shall require the previous approval of the Visitor who may sanction, disallow, or remit it for further consideration.

19. Substitution of new section for sections 29 and 30 in Act XL of 1920.—For sections 29 and 30 of the principal Act, the following section shall be substituted, namely:—

"29. *Power to make Ordinances.*—(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(c) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and the means to be taken relating to the granting and obtaining the same;

(d) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;

(e) the conditions of the award of fellowships, scholarships, studentships, exhibitions, medals and prizes;

(f) the conduct of examinations, including the terms of office and manner of appointment and the duties of examining bodies, examiners and moderators;

(g) the maintenance of discipline among the students of the University;

(h) the conditions of residence of the students of the University;

(i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students and the prescribing for them of special courses of studies;

(j) the giving of religious instruction;

(k) the emoluments and the terms and conditions of service of teachers of the University;

(l) the maintenance of High Schools and other institutions in accordance with the provisions of section 12;

(m) the supervision and inspection of Colleges and other institutions admitted to the privileges of the University under section 12A; and

(n) all other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

(2) The Ordinances in force immediately before the commencement of the Aligarh Muslim University (Amendment) Act, 1951, may be amended, repealed or added to at any time by the Executive Council provided that—

(i) no Ordinance shall be made affecting the conditions of residence or discipline of students except after consultation with the Academic Council;

(ii) no Ordinance shall be made—

(a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University Examinations, or

(b) affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study,

unless a draft of such Ordinance has been proposed by the Academic Council.

(3) The Executive Council shall not have power to amend any draft proposed by the Academic Council under the provisions of subsection (2) but may reject the proposal or return the draft to the Academic Council for reconsideration, either in whole or in part, together with any amendments which the Executive Council may suggest.

(4) Where the Executive Council has rejected the draft of an Ordinance proposed by the Academic Council, the Academic Council may appeal to the Central Government and the Central Government may, by order, direct that the proposed Ordinance shall be laid before the next meeting of the Court for its approval and that pending such approval it shall have effect from such date as may be specified in the order:

Provided that if the Ordinance is not approved by the Court at such meeting, it shall cease to have effect.

(5) All Ordinances made by the Executive Council shall be submitted, as soon as may be, to the Visitor and the Court, and shall be considered by the Court at its next meeting and the Court shall have power, by a resolution passed by a majority of not less than two-thirds of the members voting, to cancel any Ordinance made by the Executive Council, and such Ordinance shall, from the date of such resolution, cease to have effect.

(6) The Visitor may by order, direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his powers of disallowance, and any order of suspension under this sub section shall cease to have effect on the expiration of one month from the date of such order or on the expiration of fifteen days from the date of consideration of the Ordinance by the Court, whichever period expires later.

(7) The Visitor may, at any time after an Ordinance has been considered by the Court, signify to the Executive Council his disallowance of such Ordinance, and from the date of receipt by the Executive Council of intimation of such disallowance, such Ordinance shall cease to have effect

19A. Amendment of section 31, Act XL of 1920.—In section 31 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) The Executive Council may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the annulment of any such Regulation:

Provided that any authority of the University which is dissatisfied with any such direction may appeal to the Court, whose decision in the matter shall be final.”

20. Omission of section 32 in Act XL of 1920.—Section 32 of the principal Act shall be omitted.

21. Amendment of section 33, Act XL of 1920.—In section 33 of the principal Act,—

(a) in sub-section (1), for the words “the Academic Council in such manner as may be prescribed by the Ordinances” the words “the Executive Council on the recommendation of the Academic Council” shall be substituted;

(b) sub section (2) shall be omitted;

(c) in sub-section (3), for the words “to prepare” the words “and to prepare and publish” shall be substituted and the words “and to

report such results to the Executive Council for publication" shall be omitted.

22. Amendment of section 35, Act XL of 1920.—In section 35 of the principal Act,—

(a) in sub-section (1) for the words "auditors appointed by the Visiting Board" the words "the Comptroller and Auditor General of India" shall be substituted;

(b) in sub-section (2), for the words "the Auditors' report shall be submitted through the Visiting Board to the Lord Rector" the words "the report of the Comptroller and Auditor General shall be submitted to the Visitor" shall be substituted.

23. Amendment of section 36, Act XL of 1920.—In sub-section (2) of section 36 of the principal Act, for the words "Visiting Board" the word "Visitor" shall be substituted.

24. Amendment of section 37, Act XL of 1920.—In section 37 of the principal Act,—

(a) in sub-section (1) for the words "provident and pension funds" the words "pension, or provident fund or provide such insurance scheme" shall be substituted;

(b) in sub-section (2) for the figures "1897" the figures "1925" shall be substituted.

25. Amendment of section 38, Act XL of 1920.—In section 38 of the principal Act,—

(a) sub-section (1) shall be omitted;

(b) in sub-section (2) the word "other" shall be omitted and for the words "any office of any authority" the words "any office or in any authority" shall be substituted.

26. Omission of section 40 in Act XL of 1920.—Section 40 of the principal Act shall be omitted.

27. Temporary provision for amendment of Statutes.—The Central Government may, by notification in the Official Gazette, make such adaptations and modifications in the Statutes in force immediately before the commencement of this Act as, in its opinion, may be necessary or expedient to bring the provisions of the Statutes into accord with the provisions of the principal Act as amended by this Act.

Provided that nothing in this section shall be deemed to empower the Central Government to make any adaptation or modification of any such Statute after the expiration of three months from the commencement of this Act.

28. Transitional provisions.—Any officer or authority of the University exercising any functions under the principal Act, immediately before the commencement of this Act, shall continue to exercise such functions until the corresponding new officer or authority is appointed, elected or constituted in accordance with the provisions of the principal Act as amended by this Act or the Statutes as adapted or modified under this Act.

The following report of the Select Committee on the Bill to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith, was presented to Parliament on the 10th September, 1951:—

REPORT OF THE SELECT COMMITTEE

WE, the undersigned, members of the Select Committee to which the Bill to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

Upon changes which are not formal or consequential we note as follows:—

Clause 2—

Clause 2(a).—We have inserted this new clause to define “appellate officer”.

Clause 2(b) [original clause 2(a)].—We have expanded the definition of “claim” by specifically including the claim of a partner, and vesting in the Central Government power to include other interests by notification in the Official Gazette.

Clause 2(d) [original clause 2(c)].—We are of opinion that the competent officer should not have jurisdiction in respect of any property which has not been declared to be evacuee property or which is not vested in the Custodian under the Administration of Evacuee Property Act, 1950. We have accordingly amended the definition and have also made changes consequential on the amendment of the definition of “claim”.

Clause 2(f) [original clause 2(e)].—We consider that it would not be proper to exclude from the scope of the Bill all mortgage debt incurred after the 15th August, 1947. We, however, think that mortgages made after the 14th August, 1947, should not be taken into consideration unless such transaction has been confirmed by the Custodian. We have amended the clause accordingly.

Original clause 2(f).—The definition of “original principal” has been substituted by a definition of “principal money” in clause 2(h) in the light of our decision in new clause 9.

Clause 4.—We consider that as the Custodian representing the evacuee is in a sense a party to the proceedings, a Deputy Custodian should not be appointed as a competent officer. We have accordingly substituted a new sub-clause for sub-clause (2). We also think that the State Government should appoint competent officers with the approval of the Central Government. We have amended clause 4(1) accordingly.

Clause 6.—We consider that a competent officer should not issue notice of his own motion. He should issue notice only on information received from the Custodian or on application from a claimant. We further think that in every case a general notice should be issued and individual notices should also be issued where the competent officer comes to know of the persons likely to be affected.

Clause 7.—We have redrafted sub-clauses (2) and (3) to make our intention clear. We have also inserted a new sub-clause (4) to provide that documentary evidence which has not been filed in time should not be accepted.

in any proceeding under this Bill except with the leave of the competent officer.

Clause 8 (original clauses 8 and 9).—We have combined the original clauses 8 and 9 and re-drafted this clause to make our intention clear.

We have inserted a proviso to clause 8(2) to make it clear that though the decision of the Custodian is binding on the competent officer, the competent officer may determine the mortgage debt and separate the evacuee interest in a composite property under clause 10.

We have further provided that subject to scaling down of debts and separation of evacuee interest under clause 10, the decree of a civil court should be binding on the competent officer.

Clause 9 (original clause 10).—We are of opinion that in scaling down debts of evacuee mortgagors, a simple procedure should be followed. We have accordingly provided that interest on principal money should not exceed 5 p.c.p.a. simple. In determining the principal money in relation to a mortgage debt which has been renewed at any time after the 1st January, 1940 for a prior mortgage debt incurred before that date, the amount due on the 1st January 1940, shall be deemed to be the principal money. If the mortgage debt has been renewed before 1st January, 1940, the renewed debt should be taken into consideration. In a case where the mortgage debt was renewed after 1st January, 1940, for a prior mortgage debt which was also incurred after that date, the original debt should be taken into consideration. We have defined "principal money" accordingly in clause 2(h).

In the case of a mortgagee with possession of agricultural land on any terms whatsoever, we have provided that the mortgage debt shall be deemed to be extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less.

Original clause 11.—We have omitted this clause in view of the provision made in revised clause 9.

Clause 10 (original clause 12).—We have slightly re-arranged and re-drafted this clause. We have also provided that in taking any measures under this clause, the competent officer should take into account the order of preference in which the claimant wants to have his interest separated. We have further provided that where the mortgagor tenders the amount found due, the money shall be accepted in full satisfaction of the mortgage debt.

Clause 11 (original clause 13).—We have made some drafting changes to make our intention clear. We have also provided that the possession of any person (other than the claimant) who is in lawful occupation since the commencement of this Act should not be disturbed.

Clauses 13 and 14 (original clause 15).—We are of opinion that appeal should not lie to the Custodian-General. We think that appellate officers should be appointed to hear appeals against the orders of competent officers. We have laid down the qualifications of appellate officers and the manner in which appeals are to be preferred.

Clause 17 (original clause 18).—We have provided that subject to any rules that may be made, the appellate officer and the competent officer should follow the same procedure as a civil court does in regard to civil suits. Other changes are merely consequential.

Clause 19 (original clause 20) —We consider that the power to transfer cases from one competent officer to another competent officer should vest in the appellate officer and the Central Government. We further consider that the power to transfer appeals from one appellate officer to another should vest in the Central Government and the State Government. We also think that no special directions should be given while transferring a case. We have amended this clause accordingly.

Clause 20 (original clause 21).—We have slightly amended this clause to make our intention clear.

Original clauses 22 and 25.—We have omitted these clauses as being unnecessary.

2. The Bill was published in the Gazette of India, Part II Section 2, dated the 18th August, 1951.

3. We think that the Bill has not been so altered as to require circulation under Rule 77(4) of the Rules of Procedure and Conduct of Business in Parliament and we recommend that it be passed as now amended.

*TEK CHAND

B. R. AMBEDKAR

AJIT PRASAD JAIN

ACHINT RAM

YASHWANT RAI

RAJ KANWAR

GURMUKH SINGH MUSAFIR

*THAKUR DAS BHARGAVA

JASPAT ROY KAPOOR

HUKAM SINGH

B. L. SONDHI

BHOPINDER SINGH MAN

R. K. SIDHVA

NEW DELHI;

The 10th September, 1951.

MINUTES OF DISSENT

I

I am sorry to note that I do not agree with the view of the majority in regard to the provision in the proviso appearing at the end of clause 8 of the bill, which seeks to give powers to the competent officer to disregard and re-open the decrees of civil courts, so far as clauses 9 and 10 are concerned. I agree that *ex parte* decrees passed after the 14th August 1947 may not be binding and the competent officer may decide the matters dealt thereby afresh, as such decrees were made in exceptional circumstances. But I maintain that a decree of the court should not be so lightly set aside. The decree may be that of the High Court or a District Court obtained after full contest in several courts. There is no good reason why a competent officer should be allowed to sit in judgment over such decrees or even decrees obtained after contest after the 14th August 1947. I want

* Subject to a minute of dissent.

the separation of interests to be achieved by this bill and it will not be fair to disregard the ordinary law of the land which applies to all citizens alike when it is enshrined in a decree of the civil court and adjudicates their rights. We must respect the sanctity of a final decree of courts and not deviate from the principle for a supposed infinitesimal advantage. The final adjudication of civil rights by a civil court has a value all its own on a well ordered society and any attempts to tamper with it should not be encouraged.

THIAKUR DAS BHARGAVA

NEW DELHI;

The 10th September, 1951.

II

I agree generally with the above.

BAKHSI TEK CHAND

NEW DELHI;

The 10th September, 1951.

(AS AMENDED BY THE SELECT COMMITTEE)

(Words sidlined or underlined indicate the amendments suggested by the Committee; asterisks indicate the omissions.)

BILL No. 65 OF 1951

A Bill to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith.

WHEREAS it is expedient to make special provisions for the separation of the interests of evacuees from those of other persons in property in which such other persons are also interested and for matters connected therewith;

AND WHEREAS some of the aforesaid provisions may relate to certain matters in the State List and Parliament is empowered, in pursuance of a Resolution passed under article 249 of the Constitution, to make such laws;

Be it therefore enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Evacuee Interest (Separation) Act, 1951.

(2) It extends to the whole of India except the States of Assam, West Bengal, Tripura, Manipur and Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “appellate officer” means an officer appointed as such by the State Government under section 13;

(b) "claim" means the assertion by any person, not being an evacuee, of any right, title or interest in any property—* * *

(i) as a co-sharer or partner of an evacuee in the property; or

(ii) as a mortgagee of the interest of an evacuee in the property; or

(iii) as a mortgagor having mortgaged the property or any interest therein in favour of an evacuee;
and includes any other interest which such person may have jointly with an evacuee and which is notified in this behalf by the Central Government in the Official Gazette;

(c) "competent officer" means an officer appointed as such by the State Government under section 4;

(d) "composite property" means any property which, or any property in which an interest, has been declared to be evacuee property, or has vested in the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950) and—

(i) in which the interest of the evacuee consists of an undivided share in the property held by him as a co-sharer or partner of any other person, not being an evacuee; or

(ii) in which the interest of the evacuee is subject to mortgage in any form in favour of a person, not being an evacuee; or

(iii) in which the interest of a person, not being an evacuee, is subject to mortgage in any form in favour of an evacuee; or

(iv) in which an evacuee has such other interest jointly with any other person, not being an evacuee, as may be notified in this behalf by the Central Government, in the Official Gazette;

(e) "evacuee interest", in relation to a composite property, means the right, title and interest of an evacuee in that property;

(f) "mortgage debt" means any liability in respect of a property due under any form of mortgage (including any usufructuary mortgage or mortgage by conditional sale) whether such liability is payable presently or in future, or under any decree or order of a court or otherwise, or whether ascertained or not, which—

(i) in any case where it is incurred by an evacuee, is secured by the mortgage of the interest of the evacuee in the property in favour of a person, not being an evacuee;

(ii) in any case where it is incurred by a person not being an evacuee, is secured by the mortgage of the interest of such person in the property in favour of an evacuee;

but does not include any such liability of an evacuee arising out of any transaction entered into after the 14th day of August, 1947 unless

such transaction has been confirmed by the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950);

* * * * *

(g) “prescribed” means prescribed by rules made under this Act;

(h) “principal money”, in relation to a mortgage deed executed by an evacuee, means—

(i) in the case of a mortgage deed which has not been executed by way of renewal of a prior mortgage deed, the sum of money advanced by way of loan at the time of the execution of the mortgage deed;

(ii) in the case of a mortgage deed which has been executed at any time before the 1st day of January, 1940, by way of renewal of a prior mortgage deed, the consideration for which the renewed mortgage bond was executed;

(iii) in the case of a mortgage deed which has been executed at any time after the 1st day of January, 1940, by way of renewal of a prior mortgage deed executed before that date, the sum of money which became due on the 1st day of January, 1940, on account of the money advanced on the prior mortgage deed and interest thereon up to the said date;

(iv) in the case of a mortgage deed which was executed at any time after the 1st day of January, 1940, by way of renewal of a prior mortgage deed which was also executed after that date, the sum of money advanced by way of loan at the time of the execution of the prior mortgage deed;

Explanation.—For the purpose of calculating the principal money in relation to any mortgage deed which has been executed by way of renewal of a prior mortgage deed, any sum of money advanced at the time of such renewal in addition to the sum of money which was due on the prior mortgage deed shall also be taken into account.

(i) all words and expressions used, but not defined in this Act and defined in the Administration of Evacuee Property Act, 1950 (XXXI of 1950), shall have the meanings assigned to them in that Act.

3. Act to override other laws.—Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

SEPARATION OF EVACUEE INTEREST IN COMPOSITE PROPERTY

4. Power to appoint competent officers.—(1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, appoint as many competent officers as may be necessary for the purpose of performing the functions assigned to them by or under this Act, and a competent officer may perform his functions in such local area or areas as may be specified in the notification.

(2) No person shall be qualified to be appointed as a competent officer under this Act unless he has held a judicial office for at least five years, or has been an advocate or a pleader for at least seven years.

5. Jurisdiction of competent officers.—A competent officer shall have jurisdiction to decide any claim relating to any composite property situate within the limits of the local area of his jurisdiction and such cases or classes of cases as may, by general or special order, be transferred to him under section 19 by the Central Government or the appellate officer.

6. Notice to submit claims.—(1) For the purpose of determining or separating the evacuee interest in a composite property, any competent officer having jurisdiction over such property may, either on information received in this behalf from the Custodian or on an application from a claimant, issue, in such form and manner as may be prescribed,—

(a) a general notice requiring all persons who claim interest in such property, and

(b) also a notice on every person who, in the opinion of the competent officer, may have a claim in such property, to submit claims, if any, in respect of that property.

(2) An application under sub-section (1) shall be in such form and manner as may be prescribed.

7. Submission of claims.—(1) Any person claiming an interest in a composite property may, within sixty days of the date of the issue of the general notice or service of individual notice under section 6, whichever is later, submit to the competent officer a statement of his claim in writing and signed and verified in the prescribed manner:

Provided that the competent officer may entertain the claim after the expiry of the said period of sixty days if he is satisfied that the claimant was prevented by sufficient cause from filing the claim in time.

(2) A statement of claim under sub-section (1) shall be drawn up as far as may be, in the form of pleadings under the Code of Civil Procedure, 1908 (Act V of 1908) and shall include the following particulars, namely:—

(a) the nature of the interest of the claimant in the composite property;

(b) the estimated money value of the composite property;

(c) where the claim is made by a co-sharer or partner, the extent of the share of the claimant and the money value of such share;

(d) where the claim is made by a mortgagee;—

(i) the principal money and the rate of interest chargeable under the mortgage deed;

(ii) payments made towards the mortgage debt after the principal money was advanced or deemed to have been advanced;

(iii) the history of the mortgage debt in so far as it is relevant to the determination of the principal money;

(iv) particulars of the property mortgaged and the estimated value of such property;

(v) particulars of any property the possession of which has been taken by the mortgagee as security for, or in lieu of payment of, the mortgage debt;

(vi) the total amount claimed under the mortgage debt in accordance with the provisions of this Act;

(e) where the claim is made by a mortgagor, the total amount due under the mortgage debt and the particulars necessary to determine the same;

(f) the order of preference in which the claimant desires to have his interest separated from that of the evacuee under section 10:

(g) any other particulars which may be prescribed.

(3) The claimant shall, along with the submission of claim under sub-section (1), file true copies of all documents in his possession or power on which the claim is based and a list of any other documents (whether in his possession or power or not) on which he intends to rely as evidence in support of his claim; and the claimant shall, whenever required to do so by the competent officer, produce all the documents of which true copies have been filed and also the documents in his possession or power which have been entered in the list.

(4) No document which should have been but has not been filed in accordance with the requirements of sub-section (3), shall be received at any stage of the proceedings without the leave of the competent officer.

8. Decision by competent officer.—(1) On receipt of a statement of claim under section 7, the competent officer shall, subject to the provisions of sub-sections (2) and (3), hold an inquiry into the claim in accordance with the procedure laid down in section 17 and pass an order determining the interest of the evacuee and the claimant in the property in question and the order shall contain all or any of the following particulars, namely:—

(a) the money value of the property;

(b) in any case where the evacuee and the claimant are co-sharers or partners, their respective shares in the property and the money value of such shares;

(c) in any case where the claim is made by a mortgagor, the amount due to the evacuee;

(d) in any case where the claim is made by a mortgagee, the amount due under the claim in accordance with the provisions of section 9.

(2) Where the Custodian under the Administration of Evacuee Property Act, 1950 (XXXI of 1950), has determined that the property in question or any interest therein is evacuee property, the decision of the Custodian shall be binding on the competent officer:

Provided that nothing contained in this sub-section shall debar the competent officer from determining the mortgage debt in respect of such property or any interest therein or from separating the interest of the evacuee from that of the claimant under section 10.

(3) If there is any dispute as to whether a liability is a mortgage debt or not or whether any claim submitted under section 7 exists, the competent officer shall decide such dispute:

Provided that a decree of a civil court (other than an *ex parte* decree passed after the 14th day of August, 1947) shall subject to the provisions of sections 9 and 10, be binding on the competent officer in respect of any matter which has been finally decided by such decree; and where any matter was decided by an *ex parte* decree passed by a civil court after the 14th day of August, 1947, the competent officer may decide such matter afresh and on such decision being made, the *ex parte* decree shall be deemed to have no effect.

9. Certain reliefs in respect of mortgaged property of evacuees.—(1) Notwithstanding anything to the contrary in any law or contract or any decree or order of a civil court or other authority, where the claim is made by a mortgagee, no mortgaged property of an evacuee shall, subject to the provisions of sub-section (2), be liable for the payment of interest at a rate exceeding five per cent. per annum simple on the principal money advanced or deemed to have been advanced.

(2) Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; and if the aforesaid period has not expired and the mortgage debt has not been extinguished, the competent officer shall determine the mortgage debt due having regard to the proportion which the unexpired portion of that period bears to the total of that period.

10. Separation of the interests of evacuees from those of claimants in composite property.—Notwithstanding anything to the contrary in any law or contract or any decree or order of a civil court or other authority, the competent officer may, subject to any rules that may be made in this behalf, take all such measures as he may consider necessary for the purpose of separating the interests of the evacuees from those of the claimants in any composite property, and in particular may,—

(a) in the case of any claim of a co-sharer or partner,—

(i) direct the custodian to pay to the claimant the amount of money assessed in respect of his share in the composite property or deposit the same in a civil court having jurisdiction over such property and deliver possession of the property to the Custodian and the claimant may withdraw the amount in deposit in the civil court; or

(ii) transfer the property to the claimant on payment by him of the amount of money assessed in respect of the share of the evacuee in the property; or

(iii) sell the property and distribute the sale proceeds thereof between the Custodian and the claimant in proportion to the share of the evacuee and of the claimant in the property; or

(iv) partition the property according to shares of the evacuee and the claimant and deliver possession of the shares allotted to the evacuee and the claimant to the Custodian and the claimant respectively;

(b) in the case of any claim of a mortgagor or a mortgagee,—

(i) pay to the Custodian or the claimant the amount payable under the mortgage debt and redeem the mortgaged property; or

(ii) sell the mortgaged property for satisfaction of the mortgage debt and distribute the sale proceeds thereof; or

(iii) partition the property between the mortgagor and the mortgagee having regard to the share to which the mortgagee would be entitled in lieu of his claim;

(c) adopt a combination of all or some of the aforesaid measures:

Provided that before taking any measure under this section the competent officer shall take into account the order of preference filed by the claimant under clause (e) of sub-section (2) of section 7; and in any case where the claimant is a mortgagor and tenders the amount due, the competent officer shall accept the same in full satisfaction of the mortgage debt.

11. Vesting of evacuee interest in the Custodian free from encumbrances and payments, etc., to be valid discharge from all claims.—(1) Where in respect of any property, notice under section 6 is issued but no claim is filed or found to exist * * * or where any claim in respect of such property is found to exist and the competent officer separates the evacuee interest therein under section 10, the whole property, or, as the case may be, the evacuee interest in the property thus separated shall vest in the Custodian free from all encumbrances and liabilities and any payment, transfer or partition made or effected under section 10, in satisfaction of any claim in respect of the property shall be a full and valid discharge of all claims in respect of the property. * * *

(2) The Custodian may take possession of any such property by evicting the claimant and other persons who may be in occupation thereof and may, for that purpose, use or cause to be used such force as may be necessary:

Provided that the Custodian shall not disturb the possession of any person (other than the claimant) who was in lawful possession of the property at the commencement of this Act and has continued in such possession.

12. Rights of claimants *inter se* and by other persons against claimants not to be affected.—Nothing in this Chapter shall prejudice any rights in respect of the property transferred or delivered, or payment made, to a claimant under the provisions of this Act which any other claimant or other person may be entitled by due process of law to enforce against the claimant to whom the property is delivered or transferred or the payment is made.

CHAPTER III

APPEAL, REVISION AND POWERS AND PROCEDURE OF COMPETENT OFFICERS AND APPELLATE OFFICERS.

13. Power to appoint appellate officers.—(1) The State Government with the approval of the Central Government may, by notification in the Official Gazette, appoint as many appellate officers as may be necessary for the purpose of hearing appeals against the orders of the competent officers and an appellate officer shall have jurisdiction over such local area or areas as may be specified in the notification.

(2) No person shall be qualified to be appointed as an appellate officer under this Act unless such person—

(a) is, or has been, or is qualified for appointment as, a Judge of a High Court; or

(b) is, or has been, a district judge.

14. Appeals.—(1) Any person aggrieved by an order of the competent officer made under section 8 or section 10 may, within sixty days from the date of the order, prefer an appeal to the appellate officer in such form and manner as may be prescribed:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of sixty days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

* * * *

(2) The appellate officer may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such orders as he deems fit.

15. Power of revision of the Appellate Officer.—The appellate officer may at any time call for the record of any proceeding in which the competent officer has passed an order for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the appellate officer shall not pass an order under this section prejudicially to any person without giving him a reasonable opportunity of being heard.

16. Amendment of orders.—Clerical or arithmetical mistakes in orders passed by a competent officer or an appellate officer * * * * or errors arising therein from any accidental slip or omission, may, at any time, be corrected by the competent officer or the appellate officer * * * * either of his own motion or on an application received in this behalf from any of the parties

17. Powers and procedure of competent officers and appellate officers.—

* * * *

(1) * * A competent officer or an appellate officer shall, for the purpose of holding any inquiry or hearing any appeal under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908), when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses;

(d) any other matter which may be prescribed; and any proceeding before the competent officer or the appellate officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and

228 of the Indian Penal Code, 1860 (Act XLV of 1860), and the competent officer or the appellate officer shall be deemed to be a civil court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(2) An appellate officer shall, subject to the provisions of this Act, have such further powers as are vested in a court under the Code of Civil Procedure, 1908 (Act V of 1908), when hearing an appeal.

(3) Subject to any rules made in this behalf, the competent officer and appellate officer shall follow the same procedure as a civil court does in regard to civil suits including recording of evidence and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) shall, as far as may be, apply to such proceedings.

18. Finality of orders.—Save as otherwise expressly provided in this Act, every order made by * * * any appellate officer or competent officer shall be final and shall not be called in question in any court by way of an appeal or revision or in any original suit, application or execution proceedings.

CHAPTER IV

MISCELLANEOUS

19. Power to transfer cases.—(1) The Central Government or the appellate officer may, by order in writing at any time, transfer any case pending before a competent officer to another competent officer for holding the inquiry and the competent officer to whom the case is so transferred may * * * proceed either *de novo* or from the stage at which it was transferred.

(2) The Central Government or the State Government may, by order in writing at any time, transfer any appeal pending before an appellate officer to another appellate officer for hearing the appeal and the appellate officer to whom the appeal is so transferred may proceed either *de novo* or from the stage at which it was transferred.

20. Jurisdiction of civil courts barred in certain matters.—(1) Save as otherwise expressly provided in this Act, no civil or revenue court shall entertain any suit or proceeding in so far as it relates to any claim to composite property which the competent officer is empowered by or under this Act to decide, and no injunction in respect of any action taken or to be taken by the competent officer in respect of the composite property shall be granted by any civil court or other authority.

(2) All suits and proceedings pending before a civil or revenue court at the commencement of this Act shall, in so far as they relate to any claim filed before a competent officer under section 7, be stayed during the pendency of any proceeding under this Act.

(3) Nothing in sub-section (1) shall prevent any civil or revenue court from entertaining any suit or proceeding relating to any right in respect of any payment made, or property transferred or delivered, to a claimant under the provisions of this Act which any other claimant or other per-

son may be entitled by due process of law to enforce against the claimant to whom the payment is made or the property is delivered or transferred.

* * * *

21. Competent officer to be a public servant.—Every competent officer and appellate officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Act XLV of 1860).

22. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against * * * the appellate officer or the competent officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

* * * *

23. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form of any notice and the manner of its service;

(b) the form and manner in which an application may be filed under section 6;

(c) the form and manner in which claims may be submitted and the particulars which a statement of claim may contain;

(d) the manner in which inquiries under this Act may be held and the procedure to be followed by competent officers in such proceedings;

(e) the form and manner in which appeals may be preferred against the order of competent officers and the procedure to be followed by appellate officers;

(f) the powers vested in a civil court which may be exercised by the competent officers and appellate officers while holding an inquiry or hearing an appeal, as the case may be, under this Act;

(g) the manner of separating the interests of the evacuees from those of claimants in any composite property;

(h) any other matter which has to be, or may be, prescribed under this Act.

The following Bill was introduced in Parliament on the 26th September, 1951. —

BILL No. 78 OF 1951

A Bill further to amend the Bombay Coasting-vessels Act, 1838

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Bombay Coasting-vessels (Amendment) Act, 1951.

2. Substitution of certain words for the words "Master-Attendant" in Act XIX of 1838.—Throughout the Bombay Coasting-vessels Act, 1838 (here

inafter referred to as the principal Act), for the words "Master-Attendant", wherever they occur, the words "Principal Officer, Mercantile Marine Department" shall be substituted.

3. Amendment of short title, Act XIX of 1838.—In the short title of the principal Act, the word "Bombay" shall be omitted.

4. Insertion of new section 1 in Act XIX of 1838.—The following section shall be inserted as section 1 of the principal Act, namely:—

"1. *Extent.*—This Act extends in the first instance to the States of Bombay, Saurashtra and Kutch, but the Central Government may, by notification in the Official Gazette, extend it to any other State which has a sea-coast."

5. Amendment of section 2, Act XIX of 1838.—In section 2 of the principal Act,—

(a) the words "residing within the State of Bombay" shall be omitted; and

(b) for the words "the said State" the words "any State to which this Act extends" shall be substituted.

6. Amendment of sections 4, 12 and 13, Act XIX of 1838.—In the second paragraph of section 4 and in sections 12 and 13 of the principal Act, the words "within the said State" shall be omitted.

7. Amendment of section 6, Act XIX of 1838.—In section 6 of the principal Act, the words "within the State of Bombay" shall be omitted.

8. Substitution of new section for section 10 in Act XIX of 1838.—For section 10 of the principal Act, the following section shall be substituted, namely:—

"10. *Fees for certificates.*—The owner or owners of such vessels employed as aforesaid (fishing-vessels and harbour-craft being excepted) on being registered as aforesaid, shall pay—

for each certificate of registry for a vessel	
not exceeding 5 tons burthen, the fee	
of	1 rupee;

for each certificate for a vessel exceeding 5	
tons burthen and not exceeding 25 tons	
burthen, the fee of	5 rupees;

for each certificate for a vessel exceeding 25	
tons burthen and not exceeding 100 tons	
burthen, the fee of	7 rupees;

and for each certificate for a vessel of 100	
tons or greater burthen, per ton, the fee	
of	2 annas."

9. Amendment of the Schedule, Act XIX of 1838.—In the Schedule to the principal Act, for the words "Bombay *khandis*" the word "tons" shall be substituted.

10. Repeal and saving.—If immediately before the commencement of this Act there is in force in the State of Kutch, any law corresponding to the principal Act, that law shall, on such commencement, stand repealed

Provided that notwithstanding such repeal, anything done or any action taken (including any certificate of registration issued) in the exercise of any power conferred by or under such corresponding law, shall be deemed to have been issued, done or taken in the exercise of the powers conferred by or under the principal Act, as amended by this Act, as if the principal Act as so amended was in force in the said State on the day on which any such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

Indian ships are at the present moment registered under the British Merchant Shipping Act, 1894, which applies to India as a part of its law, and there are no provisions in the Indian Merchant Shipping Act, 1923, for the registration of ships. There is no law for the registration of small sailing vessels to which, on account of their design and structure, it is impracticable to apply the elaborate provisions of the British Act except in Bombay where the Bombay Coasting-vessels Act, 1838, applies. The object of the present Bill is to extend this Act to Saurashtra immediately and at the same time to provide for the extension of this Act to other maritime States as and when necessary. This Act has already been applied to Kutch under the Kutch (Application of Laws) Order, 1949.

Consequent on the merger of the former State of Baroda in the Bombay State it has to be made clear that the Bombay Coasting-vessels Act also applies to the merged State, and this is one of the things sought to be done by the new extent clause proposed to be introduced into the Act by clause 4 of the Bill.

Opportunity has been taken to make a few minor amendments in the Bill, as, for example, the substitution of "Principal Officer, Mercantile Marine Department" for "Master-Attendant", a term which ceased to be in use long ago. In the proposed section 10 (*see* clause 8), references to Bombay *khandis* are being substituted by a more commonly understood measure of weight.

K. SANTHANAM.

NEW DELHI;

The 14th September, 1951.

M. N. KAUL,
Secretary.

